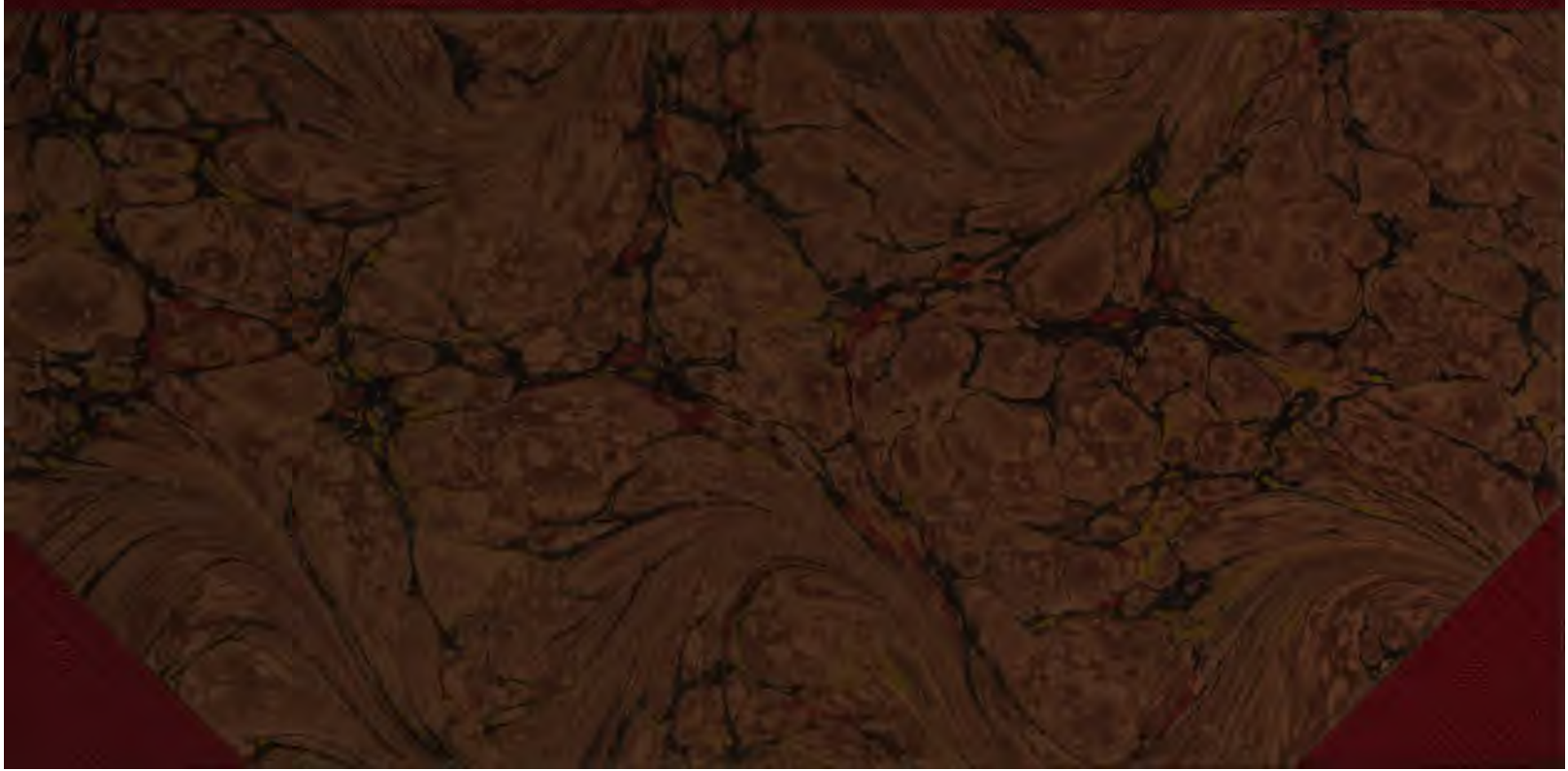

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A LETTER

ADDRESSED TO

A. H. BROWN, ESQ., M.P.,

ON THE

SETTLEMENT OF LAND

AND

SYSTEM OF LAND TRANSFER

IN

The United States.

By THATCHER M. ADAMS, Esq.

OF NEW YORK

LONDON:
D. LANE, STEAM PRINTER, 310, STRAND, W.C.

1872.

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LONDON:
D. LANE, STEAM PRINTER, 310, STRAND, W.C.

London, Oct. , 1871.

My dear Mr. Adams,

You are probably aware that much attention is being directed just now to the question of land transfer, and the law of real property in general; in fact, the whole of our land system. The agitation for an improved system is, I may say, of long standing, and latterly it has much increased. I am very much interested in the question, and my object in writing to you now is to ask you to kindly describe to me the system of land tenure, etc., as it prevails in the United States of America. I know no man in New York more competent to do this than yourself, and I hope you will be able to comply with my request. To show you on what points I am desirous of obtaining information, I enclose you a Memorandum. It will serve as a guide to you when you enter upon the task I am seeking to impose upon you.

Believe me to be,

Yours very truly,

A. H. BROWN.

Thatcher M. Adams, Esq.

New York.

MEMORANDUM

AS TO

THE TRANSFER OF LAND.

In this country the free transfer of land has been hampered by the laws of entail, and the power of tying up real estate. A statement as to how far real estate can be entailed and tied up in the United States would be of great value.

Another part of the same subject is the registration of deeds and mortgages. In this country there is no compulsory registration of deeds and mortgages, and indeed no means of registering mortgages at all. A system similar to that in force in the United States is much needed, and on this and the following points I should like to have full and explicit information :—

I. How has the system of registration been established ? and copy of the law.

II. How far is it successful? and any objection that may be urged against.

III. Who are the registers, and does the system form part of the general judicial system of the country?

IV. What are the fees charged, and what are the regulations under which deeds are allowed to be inspected?

V. Is there any danger of uninterested persons inspecting deeds for the purpose of injuring any other person by exposing him?

VI. What is the system of registration? Is *absolute* ownership to be proved, or only the fact of a transfer having taken place? If absolute ownership is to be proved before the Registrar, what number of years is necessary to do so?

VII. Any facts as to the influence of the registration of deeds and mortgage, or the value of real estate.

ALEXANDER H. BROWN, ESQ., M.P.

My dear Sir,

The question in your minute, as to how far real estate in America can be entailed and tied up, could be very quickly and simply answered by citations from the statutes of the principal States bearing upon that point. But as the subject of free transfer of landed property in England is daily becoming of more interest to the inhabitants of that country, and the methods by which such a result may best be obtained are freely canvassed, it may not be uninteresting to trace very briefly the system of tenures originally introduced into this country by the colonists, and the changes which have been wrought therein by the statutes adopted since the Revolution, until we reach the laws affecting landed property as they exist in America to-day. Our statutes having reference to entail and limitation of transfer of land will perhaps be more easily understood, and their wisdom better recognized, in the light of such a review, than if they were merely quoted and the quotations supplemented with remarks on the decisions which their interpretation has drawn from our courts.

When emigrants from Great Britain first colonized these shores, it was only natural that they should bring with them, in common with their religion, the ways of thought, the customs and the habits of their mother country, its system of laws for their protection and government. "They enjoyed the rights and privileges of British-born subjects and the benefit of the common law of England, and all their laws were required to be not repugnant unto, but, as near as might be, agreeable to the laws and statutes of England." ("Story on the Constitution," vol. I., p. 159.) It is not surprising, therefore, to find that no principle was more firmly settled and more generally recognized among the colonists than the feudal doctrine that all lands held by English colonists in America were so held by them of the

Crown; that the King, as lord paramount, had the primal right to the possession of the country; and that every settler occupied his own peculiar portion thereof through grant or permission of the Sovereign, subject to obligations of fealty and escheat to him.

This appears from the various charters of the respective colonies, and from the patents and grants made to individuals. In all these documents some rent charge is reserved to the Crown, in some instances trifling, as a certain number of pepper-corns, bushels of wheat, or beaver skins; in others of more importance, as one-fifth of all ore of gold or silver discovered within the granted territory.

But while this fundamental principle of the feudal law was recognized and admitted without question, the slavish and military part of the ancient feudal tenures never took root in our soil. We find no records of grants or tenures of knight service, but all the charters of the various colonies expressly stipulate that land within their limits should be held in free and common soccage and not in capite or by knight service. "They were all holden either as the manor of East Greenwich, in Kent, or of the manor of Hampton Court, in Middlesex, or of the Castle of Windsor, in Berkshire." ("Kent's Commentaries," vol. III., p. 511, note.) Nor do we find the tenures encumbered with the many devices and expedients of the feudal law then common in England. So far as I can ascertain, there is no trace of copyhold, gavelkind or burgage tenures to be found in any of the charters of the colonies or in their records.

It must also be noticed that there was almost an entire absence of leasehold estates.

In New York and some of the other States the erection of manors with the privileges usually attendant thereon had been provided for, and in some instances established, but they were soon found to be uncongenial to the feeling, wants, and interests of the people. They did not increase in number, and those in existence soon lost their prestige; and though the title that comes from these grants is still recognized as good, the estate as such perished.

It is but right to call attention to these facts in acknowledgment that the work of land reform has been in this

country a comparatively easy task, much easier than it can be in England. We had fewer interests to consult, our tenures were not of long standing, fortified with the prestige of centuries; above all, we had no class of large landowners to array themselves in opposition

At the time of the Revolution, then, we find lands in all the various colonies and plantations held alike under the Crown by their occupants in simple freehold tenure in soccage, free from the oppressive burdens which for a long time affected the parent country. But in the conveyance of lands and the distribution of landed estates, of intestates, there was a great diversity between the respective colonies, occasioned by the nature of their original constitutions and local positions. "The Southern colonies, including Virginia, adhered to the course of descents at the common law down to the time of the Revolution. As a natural consequence, real property was in those colonies generally held in large masses by the families of ancient proprietors; the younger branches were in a great measure dependent upon the eldest, and the latter assumed and supported somewhat of the pre-eminence which belonged to baronial possessions in the parent country. Virginia was so tenacious of entails, that she would not even endure the barring of them by the common means of fines and recoveries.

"New York and New Jersey silently adhered to the English rule of descents under the government of the Crown as royal provinces. On the other hand, all New England, with the exception of Rhode Island, from a very early period, adopted the rule of dividing the inheritance equally among all the children and other next of kin, giving a double share to the eldest son. Maryland after 1715, and Pennsylvania almost from its settlement, in like manner distributed the inheritance among all the children and other next of kin.

"New Hampshire, although a royal province, steadily clung to the system of Massachusetts (where the widow had such part of the estate as the court held just and equal, and the rest was divided among the children and other heirs, the eldest son having a double portion, and the daughters, when there were no sons, inheriting as co-partners). Rhode Island retained its

attachment to the common law rule of descents down to the era of the Revolution." ("Story on the Constitution," vol. I., page 164). These were the laws of descent as regards intestate estates. By will or deed estates tail could be created, and were recognized throughout the country, and the system of creation of such estates differed but little, if any, from that in use in the parent country.

Under such instruments land could be tied up for an unlimited period by entail, by executory devise, and by trust deeds. The sole difference between the laws of the parent country, and those of the colonies in respect to landed property, lay in the greater simplicity of tenure which distinguished the colonial system.

Then came the Revolution. During its continuance little or no change was made in the statutes and laws of the country, *Inter arma leges silent.* But with the return of peace, and the establishment of the colonies as separate and independent States, came the first blow in behalf of land reform.

The obligations of fealty to the King as lord paramount were thrown off, and tenure of lands through him as sovereign was no longer recognized. It is an interesting question, much discussed by eminent jurists on this side of the Atlantic, whether the State governments preserved the doctrine of feudal tenure at all after the establishment of peace, constituting themselves severally lord paramount in the place of the King of Great Britain, and whether the obligations of fealty formerly due to him by his tenants did not resolve themselves into the oath of allegiance which every citizen may be required to take to his own State government. Some writers of great authority maintain that the State, being in fact the landowners themselves acting as a corporate body, could not and did not assert the claim of tenure and fealty; while others of equal standing claim that, theoretically at least, there exists a tenure in this country, directly traceable to feudal origin, by which every landowner holds his estate of the State as sovereign, and that fealty is still a service and escheata perquisite of feudal character.

Without pausing to discuss this point, interesting as it is, we find that, whether this tenure did or did not ever exist after the Revolution, the principal States very soon determined that they would rid themselves by statute of what seemed to them an appearance of evil. It was thought incompatible with the condition of freemen that land should seem to be hampered by conditions of service however fictitious. Accordingly, New York in 1787 proceeded to sweep away all traces of feudal tenure with its incidents within her boundaries, and by statute declared the tenure of all gifts, grants, and conveyances, heretofore made or hereafter to be made, of any lands within her limits to be allodial and not feudal. South Carolina and New Jersey followed suit. Connecticut in 1793 declared every proprietor in fee simple of land to have an absolute and direct dominion and property in it. Virginia abolished service and feudal tenures in 1779. The courts of Pennsylvania and Maryland declared all lands within their jurisdiction allodial, and proclaimed that tenure and service had not existed there since the Revolution. At a later day Wisconsin, by her constitution, enacts that all her land shall be allodial; and a writer of authority, speaking of the great North-Western territory now subdivided into States, says the doctrines of tenure have never existed there even in theory. Here, then, we have the doctrine, broadly asserted and enforced throughout the country, that the right of property no longer came through a sovereign or superior, but that every citizen was free to purchase and hold lands in his own right and to alien them at his pleasure, subject to no claims either of the State or of his fellows. "Thus," says Chancellor Kent, "by one of those singular revolutions common in human affairs, allodial estates, once universal in Europe and then almost universally exchanged for feudal tenures, have now, after the lapse of many centuries, regained their primitive estimation in the minds of freemen." The only traces of feudal tenures now left among us consist in the principle of escheat to the State in case of default of heirs, and the language of tenure still made use of in our deeds and other instruments, and which derives its

origin from feudal sources. As a necessary sequence to this change, State governments turned their attention to the condition of the law permitting real estate to be fettered and tied up for long periods. It was felt that such principles were incompatible with a free country, and necessitated the abolition or modification of estates tail, which, in common with other parts of English jurisprudence, had been introduced into this country. In many instances the statutes abolishing or modifying these estates were enacted simultaneously with those abolishing tenures, and in others very soon afterwards. I will state the dates and orders of these reforms as nearly as I have been able to ascertain them. Virginia abolished estates tail in 1776, New Jersey in 1784 and 1786, New York in 1782, and by another statute in 1786 converted all estates tail into estates in fee simple absolute, as did North Carolina in 1784, Kentucky in 1796, and Tennessee, Georgia, and Missouri at various times thereafter. In Vermont, Indiana, Illinois, South Carolina, and Louisiana this class of estates does not appear to be known to the law, and it is doubtful whether it has ever existed there. In Massachusetts the estate still survives, but by statute the entail can be barred at any time by the tenant in tail, by deed in common form, and the tenant for life and remainder man can also convey an estate in fee simple by uniting in a deed in common form, which bars the entail and all remainders and reversions incident thereto. In New Hampshire legislation follows that of Massachusetts, and estates tail can be barred by common deed and by will. In Ohio and Connecticut, if an estate tail be created, the first donee takes a life estate, and a fee simple vests in the heirs or remainder man.

This is also the case in New Jersey, by statute passed in 1820. Estates tail exist in Maine, Pennsylvania and Delaware, subject, nevertheless, to be barred by deed, and in two of these States by will. They are also chargeable with debts of the tenant, and a fee simple passes on a judicial sale to satisfy debt. In Maryland estates tail general are understood, since the Act of 1786, to be virtually abolished or to exist only in name, as they can descend, be conveyed, and are charge-

able with debts in the same manner as estates in fee simple. In Rhode Island estates tail may be created by deed, but not by will, longer than to the children of the devisee, and they may be barred by deed or will. ("Kent's Commentaries," vol. IV., page 15.) It will thus be seen that estates tail are practically abolished throughout the United States. The principles which foster their creation and preservation are diametrically opposed to Republican institutions. The very idea of an estate entailed from generation to generation in one family necessarily involves the aggrandizement and perpetuation of that family, and consequently could never be entertained by governments founded upon the declaration that all men are born free and equal. It will be noticed that while the name of the estate, as such, is preserved in some of our States, it is shorn of all its power and prestige by the statutory provisions guarding its creation; and though the grantor may, if he please, designate it an entailed estate, he cannot by any exercise of legal ingenuity insure its preservation as an entailed estate for a longer time than is permitted by the statute. This term, when prescribed, in no instance exceeds the life of the first taker. When no term is prescribed, provision is made for barring the entail at any time by the holder of the estate, by executing a simple deed, so that the choice rests entirely with the possessor whether he will part with it or not. In our busy active life, experience has shown that there is little temptation to hold ancestral acres from father to son for generations, when the law gives the owner the power to convey them away and employ the proceeds in commerce, manufactures, or the path of political ambition.

Other States, among which New York stands pre-eminent, have entirely abolished entailed estates, and substituted therefore estates in fee simple absolute. The language of the revised statutes of New York, which took effect January 1st, 1830, is plain and effective. "All estates tail are abolished, and every estate which would be adjudged a fee tail, according to the law of this State as it existed previous to the 12th day of July, 1782, shall hereafter be adjudged a fee simple, and if no valid remainder be limited thereon, shall be a fee

simple absolute." (1 Rev. Stat., part 2, art. 1., sec 3.) This method of striking at the root of the system and cutting it out seems to be dictated by a wiser policy than that which preserves the name and theory of the estate, but takes away from it all its incidents and its life. The period within which alienation of real estate could legally be suspended was, of course, in a great measure dependent on these changes.

The abolition of entailed estates in most of the States left the time within which ownership of land could be suspended to be fixed by the familiar rule of the common law of England, which provides that alienation shall not be fettered for a longer period than a life or lives in being and twenty-one years (and in case of pregnancy twenty-one years and nine months thereafter). This rule is still in force in Massachusetts, in New Jersey, in Illinois, and many of the other States. In New York, however, the rule has been changed by the Legislature. This State has the distinction of being especially prominent in matters affecting land reform; and, dissatisfied with the chaotic condition of the system under the application of ancient rules mixed with those adopted since the Revolution, appointed a commission of her ablest lawyers to codify and establish the statutes regulating estates in land, their transfer by deed or descent, and all other matters relative thereto. These rules, subsequently adopted by the Legislature, with others relating to other matters, are known as the Revised Statutes. The change made was radical and thorough, and will be stated in the fewest possible words. The Revised Statutes provide that the absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; and holds every estate void in its creation which suspends the power of alienation for a longer period. There is one exception made to this rule, as follows. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited shall die under the age of

twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they reach full age. (1 Rev. Stat., part 2, sec. 14, 15, 16.) Perhaps the language used by the revisers in their notes in explanation of these provisions will convey the best idea of their purpose and interest.

I quote, "Notwithstanding the abolition of estates tail, our law (meaning the law in force before passage of the Revised Statutes) allows certain executory dispositions of land and the profits of land, by which the former may be rendered inalienable and the latter be made to accumulate for a life or lives in being and twenty-one years thereafter. This limit is derived from the English law, and was originally adopted by the English judges from analogy to settlements by entail. When our Legislature abolished entails, they left the common law in regard to executory limitations unaltered. Land may be rendered inalienable for a longer period by a springing use or executory devise than by entail. In the settlement of an estate tail the life estate depends upon a single life, but in these executory dispositions, as the lives are not necessarily required to take any interest in the estate or to be in any way connected with it, any number may be introduced at the pleasure of the party, and for the mere purpose of protracting the period of alienation. In England this has often been done. In one case twenty-eight persons (all of whom, except seven, were strangers taking no interest in the land) were inserted for the purpose of securing the longest possible term. It is obvious that the chance of finding out of so great number a very long life is much greater than in the case of the entail. Again, the time of twenty-one years in the case of the settlement by entail only occurs during the actual infancy of the party entitled in remainder. In the case of the executory devise, it is added to the life or lives in being as an absolute term; and there may be cases where, after the expiration of the twenty-one years, the real infancy of the party may be added to the former time, thus rendering the land inalienable, except in special cases, for twenty-one years longer." They go on at great length to advocate the proposed enactments. Their arguments were successful, and the statutes, as revised, were passed. The

difference between the new provisions and the law as it previously stood consists in the following particulars :—

1. Alienation cannot be protracted by means of mere nominees unconnected with the estate beyond the period of two lives.

2. No more than two successive estates for life can be created.

3. The period of twenty-one years after a life or lives in being is no longer allowed as an absolute term, but the rule is restored to its original object by being confined to the case of *actual infancy*, which is directly provided for by rendering the disposition defeasible and allowing another to be substituted during that period.

These provisions have been in force since 1830, and I think I express the general sentiment of the profession when I say that they have worked most admirably. They are plain, clear, and simple, though numerous attempts have been made to avoid them by every method that legal ingenuity could devise. The courts have invariably interpreted them literally and in accordance with the intent of the great lawyers who devised them. They restrict the suspension of alienation to lives only, so that suspense for a term of years, however short, or dependent in part upon life and in part upon a fixed period of time, is not allowed. I could quote numberless decisions of our courts supporting them, but I do not think it necessary, as I have already far exceeded the anticipated limits of this article. Some other States, principally Western ones, have followed New York in adoption of similar statutes. In the others, as I have already remarked, the old common law rule holds good. It is but natural that a citizen of New York should consider her system of laws better than that of her neighbours ; but, in addition to this pardonable preference, I must express my admiration as a lawyer, unprejudiced by birth or residence, for the simplicity and perfectness of her system of real estate law. Under it no landed aristocracy can be formed to hand down constantly increasing power in one line, while it does not forbid the natural care and foresight of a father in placing his estate in trust for negligent or unfortunate children during a proper and reasonable term.

In the same connection the revisers provided for an accumulation of the rents and profits of real estate for the benefit of one or more persons. Any one familiar with English law will readily call to mind the Thelusson case, where the testator, for the purpose of securing the accumulation of his estate and the aggrandizement of his descendants, resorted to executory devises restraining his immediate issue from participation in the benefits of his wealth to such an extent that the British Parliament passed the Act 40, George III., chap. 98, to prevent such cases for the future. Bearing in mind this and similar cases, the revisers provided "that if the accumulation be directed to commence on the creation of the estate, out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority. If such accumulation be directed to commence at any time subsequent to the creation of the estate, out of which the rents and profits are to arise, it shall commence within the time permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority." (1 Rev. Stat., p. 726.)

The overweening ambition which would provide for the enormous wealth of dishonest descendants to the prejudice of near and intermediate ones is thus effectually cut off.

In case of death of owner of real estate intestate in New York, the statutes provide that the property shall descend to his lineal descendants of equal degree of consanguinity in equal shares, the child or children of any deceased child of the intestate to take the same share to which his, her, or their parents would be entitled if living.

This is a natural sequence of the abolition of laws of entail; but the custom differs somewhat in different States, the elder son in some instances taking a double portion. I have not thought it worth while to examine at length the various statutes of other States in relation to descent. That of New York seems to be the most just and equitable. The number of the States and their voluminous statutes render the labour of examination of all of them a very serious task. The particulars already given will, it

is assumed, be sufficient for the purpose. To review briefly the foregoing sketch, we find that landed estate in this country stands thus :—

1. All lands are allodial, free from service of any kind to a sovereign, and the absolute property of their owners.
2. Estates tail are practically done away with throughout America. When they exist in name they can be barred by common deed or will.
3. In New York the power of alienation cannot be suspended for more than two lives in being at the creation of the estate, except in the single case of the first remainder man dying under the age of twenty-one years, or his estate determining in any other way before he reaches his majority. When this or a similar rule is not followed by other States, the common law rule of England is in force, limiting time of suspense to a life or lives in being and twenty-one years thereafter.

Connected with this state of things, and, indeed, as a natural consequence flowing from it, is the simplicity of our system of conveyance by which the titles to estates are passed, and the notoriety of the transfers made.

We possess an almost uniform mode of conveyance of land at once simple, practicable and safe. All lands are conveyed by deed, with or without covenants, at the pleasure of the grantor, attested by one or more witnesses, acknowledged or proved before some court or officer, and then registered in some public registry. This will be treated of hereafter. When so executed, acknowledged and recorded, they have full effect to convey the estate without livery of seizin or any other act or ceremony whatsoever.

It is hardly possible, says Judge Story, to measure the beneficial influence upon our titles arising from this source in point of security, facility of transfer, and market value.

I do not think I can conclude this branch of the subject better than by again quoting the reasons given by our revisers for the reforms undertaken and carried out by them. They say, "It is

justly remarked by Mr. Cruise that the law of real property is the most extensive and abstruse branch of English jurisprudence. Such indeed is its extent and intricacy, that even in the legal profession it is very imperfectly understood by any who have not made it an object of special study and attention, and so remote are its principles and maxims from ordinary apprehension, that to the mass of the community they seem to be shrouded in impenetrable mystery. It is surely needless to add that in the same proportion as the law is complex and obscure is litigation frequent, expensive and uncertain. Ignorance of the law is the parent of controversy, and that ignorance must always continue whilst the avenues to knowledge are difficult to all and to most inaccessible. Under such circumstances it is plainly a duty to inquire into the source of these evils, the means of their removal, or the necessity of their continuance. If the defects of the system spring unavoidably from the nature of the subject which it is framed to regulate, we must submit to their continuance, but if they are accidental and factitious we ought diligently to seek and firmly to apply the necessary remedies.

"The first inquiry therefore is, considering the nature of the subject, Is there any necessity that the laws of real property should be in a peculiar degree extensive and abstruse? If we direct our attention to the laws of other countries we shall find that, so far as they relate to real property, they are in a measure free from the objections to which our own system is liable. In the civil law the regulation concerning the enjoyment, alienation and transmission of real estate, comparatively speaking, are neither numerous nor difficult to be understood, and in the Code Napoleon they form a very small and perfectly intelligible portion of that immortal work.

"If we look to the objects which laws in relation to real property are meant to attain, they do not seem to present any intrinsic difficulties that should prevent us from framing a simple and intelligible system. The owner is to be protected in the enjoyment of his property, his power of disposition is to be defined, the transmission of his estates to his descendants or relatives is to be regulated, its mode of alienation is to be prescribed, its liability to the claims of creditors must be secured, and to purchasers the

means of investigating the ownership must be afforded. The proper rules on these various subjects would seem derivable from a few principles of clear and general utility, level to the comprehension of all whose rights are to be affected by their application. We have no difficulty in believing that every man of common sense may be enabled, as an owner of real property, to know the extent of his rights and the mode of their exercise, and as a purchaser, to judge with some assurance of the safety of the title he is desirous to acquire.

"It appears a necessary conclusion from these remarks that if our law of real estate is voluminous and obscure in a particular degree, it is to peculiar causes that these defects are owing, and this conclusion is amply justified when we advert to the history of this law and the character of its provisions. It is not an uniform and consistent system, complex only from the multitude of its rules and the variety of its details; but it embraces two sets of distinct and opposite maxims, different in origin and hostile in principle. We have first the rules of the common law connected throughout with the doctrine of tenures, and meant and adapted to maintain the feudal system in all its rigour; and we have next an elaborate system of expedients, very artificial and ingeniously devised in the course of ages by courts and lawyers, with some aid from the legislature for the express purpose of evading the rules of the common law, both in respect to the qualities and the alienation of estates, and to introduce modifications of property before prohibited and unknown. It is the conflict continued through centuries between these hostile systems that has generated that infinity of subtleties and refinements with which this branch of jurisprudence is overloaded."

It was to remove these serious inconveniences that the revisers proposed their changes in our statutes, and such were the words in which they advocated their proposal. Remembering that the laws of New York at this date were derived from English sources, cannot these words be applied with equal, if not greater, force to the system in force in England to-day? The revisers carried their point; their rules, simple, clear, and pertinent, were adopted, and the result has been all, and more than all, that they ever anticipated. They met with fierce opposition

in securing their point, but no one questions to-day the advantages attendant on their system.

I hope to live to see land reform in England. It can be introduced with no stronger or more pertinent words than those I have cited.

I will now proceed to consider our system of registration as connected with what has already been stated. Let me state here that the authorities cited in the preceding pages can all be found in the law library of the Middle Temple in London, and will repay examination.

In attempting a brief sketch of the system of registration of written instruments now in force in the State of New York and in most of the other States, it is but right that I should commence by stating what seem to me to have been the causes which led the Legislature to its adoption. They are three in number.

First. A desire to promote greater security for the owners of real estate and of mortgagees.

Second. A desire to enable the members of a community largely engaged in business to investigate to some extent the responsibility of those with whom they traded.

Third. A feeling that such a system must be a necessary sequence of the removal of restraints upon alienation and the establishment of free trade in landed property; in other words, a desire to promote convenience in the examination of titles, whether for purposes of transfer or for loans.

These various causes I propose to examine at length as we progress with our subject, endeavouring to ascertain whether or not the system devised and existing at present, almost without change since its adoption, has met and answered these demands. In my examination of this system I will, for purposes of convenience, take up the points in your minute in somewhat different order from that in which they are there placed, dealing first with the election and tenure of office of the officers having charge of the record of written instruments; second, with the method of record, and what entitles to record; third, the conduct and

rules of the register's offices; and, lastly, the various matters incidental to the system.

First.—As to the Officers having Charge of Registration.

The State of New York is divided into sixty counties, each of which has its capital or county town In this county town are deposited, in appropriate buildings, the records, maps, and papers of the county. Each county has its clerk, chosen by the electors once in every three years. At first these officers, in connection with their other duties, were invested with the control of the registration of deeds and other instruments; but as the State increased in wealth and population, and the transfer of land grew more and more frequent, in was found necessary, first in the city of New York and afterwards in most of the large cities of the State, to appoint an officer who should have exclusive control of this important duty. His official title is "register" of the city or county where his office is situated; he is chosen by the electors of such county once in three years, and as often as a vacancy may occur, and he must reside within the city and county for which he is elected.

He may be removed by the governor of the State at any time during his term of office, for cause shown; and in case of a vacancy in the office, from any other cause than death of the incumbent, the governor has the power of appointment of a successor until it shall be filled by another election.

In case the right of the register to his office ceases before commencement of his term of office, a special election may be held to fill the vacancy.

The register must have an official seal, and all certificates required by law to be made by him shall be under his hand and seal of office.

His compensation is not stated, but derived from fees prescribed by statute for performance of his duties, the nature and amount of which will be treated of hereafter.

In the cities and towns where the office of register has not been established by law, the powers and duties of that office appertain to and are exercised by the clerk of the county in which the city or town is situate, and all papers affecting real estate

within that county must, if their record is desired, be sent for that purpose to the county clerk at the county town.

The clerks of the various counties are subject to the same laws and regulations as regards their election, removal, term of office, and compensation as the registers of cities.

The officers in question, whether known as clerks or registers, are classed by statute under the head of judicial officers and are elected as such. Their duties, however, are purely ministerial. If a paper properly authenticated is presented to them for record, they must comply with the request and put it on record. The form of authentication, as will be explained hereafter, is prescribed by statute. The only question presented to the register or clerk for decision is whether that form is complied with.

The third question of your minute, therefore,—whether the system forms part of the judicial system of the country,—may be answered by saying that nominally it is a part of our judicial system, inasmuch as the officers having charge of registration are by statute denominated judicial officers, but that practically it has nothing to do with the judicial system of the State so far as the duties of those officers are concerned.

Second.—The System of Record.

1st. *What Entitles to Record.*

No proof of ownership is necessary before the register or clerk. To entitle any document to record, it must be signed by the parties executing it, and acknowledged by them, or proved by the subscribing witness thereto before any officer entitled by statute to take acknowledgment of deeds. (See Appendix, page 49, chap. 3, part 2, sec. 4 et. suiv.)

The officer taking such acknowledgment must know or have satisfactory proof that the person making such acknowledgment is the person described in the deed and who executed the same. If a married woman residing in the State joins in the conveyance, the officer must examine her apart from her husband, and satisfy himself that she executed it without any compulsion on his part. If proof is made by a subscribing witness, he must

state his place of residence, that he knew the person described in and who executed the conveyance; and the witness must either be known to the officer taking the acknowledgment, or furnish satisfactory proof of his identity. If any subscribing witness refuse to acknowledge a conveyance, he may, upon the application of the grantee, his heirs or representatives, be compelled to do so.

The officer taking the acknowledgment then endorses upon the conveyance a certificate signed by himself under his official title, setting forth what has been done, the names of the witnesses, if any have been examined before him, and their residence, and the substance of their evidence as taken by him. The conveyance must then be stamped in accordance with the United States revenue law, and is ready for record.

The register or clerk of the county wherein the real estate is situated must, if required, record the same on presentation.

He has no choice in the matter. If the certificate is in the form prescribed by the statute, he is not authorized to go behind it or make any further investigation, but must receive the instrument for record.

There are some other provisions in the statute as to the acknowledgment of instruments by officers resident out of the county where the real estate is situate, but for the purpose of this inquiry it is not deemed necessary to specify them. (See Appendix, page 49, chap. 3, part 2, sec. 5, 6, 7, and 8.)

Second.—The Effect of Neglect to Record.

An examination of sec. 1 of the law herewith submitted will show what our Legislature considered the most effective method of enforcing compliance with its provisions.

It appeals entirely to the self-interest of the owner, purchaser, or mortgagee of real estate. It provides that every conveyance not recorded in the office of the clerk (or register) of the county where the real estate thereby conveyed is situate, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

As a penalty for disregard and neglect of its provisions, it simply hangs over the head of every buyer or mortgagee of

landed property the possibility of losing his purchase or his mortgage. Its effect is to make every purchaser of real estate look upon the record of the conveyance by which he acquires title as the first and most important step to be taken after completion of his bargain, and as an essential requisite to the validity of his possession. By the record of his deed he places himself before the world as at least the *prima facie* owner of the property covered thereby, and meets every attack upon his title with the andvantages incident to this position. By neglecting to record his deed he exposes himself to the chance of absolute loss of his property at the hands of dishonest grantors, who, finding themselves on the record as still owning the land, may resell to *bona fide* purchasers, who record their deed before him, and certainly to the trouble and annoyance of disproving their *prima facie* title and explaining the reasons of his delay in observing the provisions of the Registry Act, a delay which always raises a presumption against the delinquent.

It has been found in practice that this proviso secures a quick and universal compliance with the requirements of the statute, and instances of omission to record instruments affecting real estate are rare. The Act does not, as a casual observer might think, encourage fraud and dishonesty in selling or mortgaging property more than once. If the omission or neglect can be explained, a court of equity will always interfere to secure the property to the rightful owner, and the Act carefully provides that the second purchaser must act in good faith and pay a valuable consideration for his purchase. Successful fraud in the transfer of real estate is more rare than in any other description of business. The publicity given to real estate sales by the system of registration, the quotations given in the papers, and the easy access to the register's office itself render it a matter of great difficulty to perpetrate fraud upon a purchaser who exercises ordinary care in the examination of title to his property and in the record of his own deeds.

In this view of the system I think that I am warranted in assuming that it has been successful and has attained the first object noted at the commencement of this paper—greater security for owners and mortgagees of real estate.

Third.—THE METHOD OF RECORD.

By sec. 2 of the law, every register or clerk of a county must provide two different sets of books to be kept in his office. In one set every conveyance absolute in its terms, which has been examined by the register or clerk and found entitled to record, is recorded; in the other, every mortgage or instrument in the nature of a mortgage. Sec. 3 of the statute provides that if a conveyance absolute in its terms shall be intended by the parties thereto as a mortgage, it shall be considered as such, and the person recording it shall not derive any advantage from its record unless every writing explanatory of its character or operating as a defeasance shall be recorded at the same time with it.

Most clerks and registers, as matter of convenience, provide other and separate books for other instruments, such as powers of attorney, satisfaction prices of mortgages, etc.

They also receive and file maps of real estate, showing its division into tracts and lots, which, when so filed, become very useful to conveyancers as declarations of boundaries. In such instances property conveyed is frequently described by its number on a map recorded in such a register's office at such a date.

The register or clerk, when receiving an instrument for record, first examines the acknowledgment; if this is satisfactory, and the instrument is properly stamped, he minutes upon it the exact time of its receipt, which is very important in view of the provision already referred to in sec. 1 of the act. He then enters it in a blotter or index, and passes it to the copying clerk to await transcribing in its order.

The clerk copies it verbatim in its appropriate set of books. It is examined, and the register affixes to the copy in the book a certificate under his hand of the date and exact moment of its receipt for record, and of the name of the person at whose request it was recorded.

He gives a similar certificate upon the instrument itself, adding the number and page of the book in which it is inscribed. The instrument is then returned to the owner on payment of the register's fees, which will be noticed hereafter.

The register or clerk is by statute also made the depositary of chattel mortgages required by law to be filed, and keeps a separate book for the purpose of recording these instruments. In some counties wills are also recorded by the clerk, but in the city of New York and other large cities those documents are recorded by the surrogate or judge of the courts of probate.

Second.—Rules for Inspection of Books.

In the city of New York the register must by statute keep his office open for transaction of business every day in the year, except Sundays and such other days as are by law declared to be holidays, from 9 a.m. to 4 p.m. In all other counties the office must be open from 8 a.m. to 6 p.m. from March 31st to October 1st, and for the rest of the year from 9 a.m. to 5 p m. During these hours any one may examine any and all books, indices, maps and other documents therein contained without fee. Permission is freely accorded to take notes and memoranda of the records, tables and desks being provided for the purpose. Each register makes his own rules and regulations for the conduct of his office, but the principle rule is of course the same in all, and is, that the books must not be torn or defaced or taken from the office.

Indices to the books are kept as follows:—Two sets are allotted to the conveyances, in one of which are alphabetically entered the names of the grantors, in the other those of the grantees. The same system is followed with mortgages, one set showing the mortgagors, the other the mortgagees.

By this method, any one possessing the name of one party to an instrument can readily ascertain that of the other party, and thus follow the chain of title without difficulty.

Third.—Fees of the Register.

These are regulated by statute, and are as follows:—

1. For recording conveyances of real estate and all other instruments that by law may be recorded, ten cents for each folio. The folio comprises one hundred words. Ten cents is about equal in value to sixpence sterling.

2. For filing every certificate of satisfaction of mortgage and entering such satisfaction, twenty-five cents.

3. For filing a chattel mortgage, six cents; for a copy of the same, six cents.

4. For searching the records of his office, five cents for every year covered by the search.

5. For copies and exemplifications of all records furnished on request, when no special provision is made, eight cents a folio.

6. Every certificate, twelve and a half cents; but he is not allowed to charge for certifying any papers for the copying of which he shall be paid.

7. For record of wills, when such instruments are recorded in his office, the same fees as for record of conveyances.

Under the fourth subdivision the item of searching is provided for. It is thus explained. As the records grew voluminous conveyancers were fearful of sometimes overlooking a deed or instrument affecting the title upon the examination of which they were engaged. The practice then arose of putting in a requisition upon the register, to search in his office for all instruments on record there affecting certain property, made by certain individuals. The register employs searchers, whose business it is to examine the records and make return of the desired information. The register certifies this under his hand and seal, and it is usually annexed to the abstract of the title.

For any error in the return, or omission to return, the register is liable in damages.

The system of fees is in my opinion undesirable. As business increases in the office the temptation to exceed the statutory fees is great, and, as the legal profession cannot well afford to offend the register, imposition is tacitly submitted to for the purpose of securing speedy returns and facilitating examinations. The fees from the large offices amount in the course of the year to a very handsome sum.

The income of the register of the city and county of New York is estimated at 100,000 dollars (say £20,000) yearly. Hence the office is not unnaturally regarded as a very desirable position by those who look upon political life as a means of livelihood. It is usually given to some prominent politician of the dominant party as a reward for political services, and although his term of office

is short, he seldom fails to realize a handsome sum from its emoluments.

The foregoing pages give a succinct account of the method of registration as practised in New York. In other States of the Union the practice may differ in matters of detail, but the principle of the system is the same and the results attained similar.

I will now take up the other questions of your minute not heretofore answered, and endeavour to give brief but satisfactory reply thereto. The questions are numbered 2, 5 and 7.

The first of them, No. 2, asks whether the system is a success, and what objections can be urged against it?

It is unquestionably successful. If it were abolished to day the effect would be disastrous, and its loss would greatly affect the general prosperity of the country.

I assume that, if I can show that it has answered the three demands made by the Legislature when contemplating its adoption, it can be called successful.

Let us see whether it has done so.

In my examination of sec. 1 of the statute I think I have proved that it has answered the first demand, and given greater security to the landholder and the mortgagee. I have shown there that a neglect to record conveyances and mortgages raises a presumption against those who have failed to do so, a presumption very difficult to explain when the failure to record is connected with any suspicious circumstances in business transactions or otherwise. The converse is true of those who observe the provisions of the statute and promptly record their deeds. They become *prima facie* owners of the property at once and proportionately strengthen their title. Without further words on this head, I repeat the assertion, that under this system successful fraud in real estate transactions is very rare, as the best proof of its success.

As an incident to this part of the subject I would call attention to the fact that the system affords great aid in perfecting documentary evidence of title to land.

As will be seen by sec. 16 and 17 of the statute, our courts not only admit in evidence, without further proof, all instruments

acknowledged or proved so as to entitle them to record, but also the records of such conveyances and transcripts thereof duly certified by the recording officer.

The proof is, of course, not conclusive so far as regards the certificate of acknowledgment in the former case, nor the record or transcript of the record in the latter. These may be rebutted and contested by any party affected thereby; but when the instruments are of unquestioned authenticity, and the originals thereof are lost, it will at once be seen how much assistance this provision gives to the landowner seeking to establish his title by documentary proof. It saves all labour in hunting up witnesses and securing verbal testimony as to contents of lost documents, providing the precaution has been taken to record them. This one provision would entitle the statute to favourable consideration in view of litigation, and fraud prevented thereby. Lastly, the system is of great advantage to the mortgagee in actions brought for the foreclosure of his mortgage. It gives him the opportunity of ascertaining without trouble all persons who are in any way interested in the equity of redemption of the mortgaged premises, so that they can be made parties to the suit and clear title given to the purchaser. It affords the purchaser an opportunity of examining the foreclosure proceedings and judging for himself if they are properly conducted. Any person claiming an interest in the property who has neglected to record the papers under which he claims is under our statutes not a necessary party to the suit. This cuts off many troublesome claims and much litigation which otherwise would be rendered possible. It is of equal value to all parties litigating claims to real estate in ways so palpable that it is useless to enlarge further upon them.

2nd. It has proved of great advantage to the business community in affording opportunity to examine within certain bounds the responsibility of business men.

It must be remembered that with us almost every one is engaged in active business, and that a knowledge of the resources of those with whom one conducts trade is essential. While in England the position of a landholder is looked upon as eminently desirable, it is usually considered unattainable to those in active business until they have realized a competence and are seeking

an investment for their gains. Then they aim at controlling large tracts of land comprising many acres, conscious that the larger the estate the more chance they have of social position and advancement. In America, on the contrary, the removal of the restraint on alienation of land has stimulated an active trade in that species of property, and it is a rare thing to find business men who do not count among their assets some real estate. I do not refer to those who deal exclusively in lands, but to the great mass of business men, merchants, tradespeople and professional men, who from time to time invest their spare funds in the purchase of real property. Many of these own their homesteads in the country, or their houses in the city, and in addition frequently purchase lands to hold for a time, with the expectation of selling it at a profit. To such men, making daily contracts with their neighbours, the opportunity of ascertaining whether or not the parties with whom they are dealing own real estate, and if so how much it is encumbered, is invaluable. It may often determine large transactions to find that the person with whom it is contemplated engaging in them possesses real estate of value and may decide the merchant to decline the negotiation if he ascertains that the real estate of the man with whom he is treating is encumbered to its full value. The search is not an inquisitorial one undertaken from idle curiosity, but is conducted from the same purposes and motives that lead every prudent business man to employ all the agencies at his command to ascertain the financial condition of those with whom he deals. The records of the register's office may not be so extensively employed for this purpose as for some others, but in many instances they are extremely useful therefore, and the system that extends these advantages as one of its incidents must be considered a desirable one to a trading community.

Lastly, as a matter of convenience in promoting examination of titles, the system has proved an unqualified success.

Before its establishment muniments of title were preserved, as is now the case in England, by holders of their realty or their attorneys. The examination of the title to real estate, whether for the purposes of purchase or mortgage, was frequently attended with great difficulty. Instruments were found to be torn or

defaced, and often missing. The country was rapidly growing, and the persons through whom real property had passed were often found to have moved away into remote districts, carrying with them their evidences of title. It soon became evident that one of the first requisites to a free transfer and market of landed property was an opportunity to trace its title without the annoyance and perplexity attendant on the discovery and examination of the original title deeds. The present system has been found to answer admirably such requirements. The records being verbatim, an examination thereof is equivalent to an examination of the original title deeds, and such examination can be made at one office without loss of time.

From the notes and memoranda taken by examiners from the record, is usually compiled a complete abstract or history of the title of the property under examination, showing the transfer it has undergone, the numbers and pages of the books where records of these transfers may be found, the mortgages outstanding against it, and all other items in any way affecting the title. To this abstract are affixed the searchers or official returns of the register heretofore mentioned, with those of all other officials whose province it may be to keep or record all documents constituting liens or incumbrances upon the property, and the whole is then transmitted with his recorded deed to the purchaser by the conveyancer. It is preserved by the owner for reference. So complete is this system, that the purchaser or mortgagee of real estate rarely preserves original title deeds other than those by which he himself acquires title.

He is satisfied with the record as shown by his abstract, and gives himself no concern as to the title deeds.

It will be seen at once how much more convenient is this system than that pursued in England, where possession of the title deeds is the first demand of the mortgagee, involving the possibility of irreparable loss to the owner as well as great inconvenience if he desire to consult them. Under this system the mortgagor reserves to himself the possession of his own title deeds, the mortgagee contents himself with his mortgage and his abstract. In case of the dishonesty of an English attorney to whom have been committed valuable title deeds for safe keeping

the owner may be put to great loss and inconvenience, if not to ruin. In America, if the deeds have been recorded, the loss of the original papers is a mere trifle.

The system does not, as some English conveyancers claim, work injury to that class of professional men. Experience has shown that, on the contrary, the facility of examination of title has stimulated greater activity in transfers of real estate, and consequent increase of business in conveyancing.

Conveyancers are in the habit of preserving copy abstracts of the property which they have examined, a practice which is frequently found of great utility.

As an example of this, it has been found that in the recent terrible fire in Chicago, where not only individual title deeds but the records of the entire county were consumed, the title to almost every lot in the burnt district can be established by abstracts or memoranda of the records, made by careful conveyancers, which were preserved from the fire or stored in places beyond its reach. A set of books, known as abstract books, were kept by one conveyancing firm in the city, in which were carefully entered, day by day, the names of parties to every deed and mortgage left for record, a brief description of the property covered thereby, the consideration named in the instrument and the name of the person leaving it for record.

These books were saved from the fire, and from the information contained therein it is considered probable that the title to all lands in the burnt district, a space of 2600 acres, can be established. The Legislature of the State of Illinois is now considering a proposal to purchase these books and constitute them public property.

If no system of registration had existed in Chicago, by which free access could be obtained to recorded instruments and notes taken of their contents, such a set of books could never have been compiled. Individual title deeds, scattered here and there among the offices of the owners or their attorneys, were almost universally destroyed, because of the impossibility of finding them at a moment's notice, but this set of books, compact and unique, was made an object of search in the offices of its owners, to the exclusion of everything else, and saved without difficulty.

The condition of titles in Chicago is sufficiently complicated to-day, but it would have been confusion worse confounded had it not been for the preservation of this and kindred sets of memoranda.

The fact that the system of registration conduces to multiplication of abstracts and memoranda of important titles, which in extraordinary cases, such as destruction by fire of great cities, are of value in re-establishing titles, must be considered a strong argument in its favour. These, then, are the grounds on which I consider our system of registration a successful one :—

1st. It gives greater security to property owners, and discourages fraud.

2nd. It aids the merchant in his estimate of the responsibility of those with whom he trades.

3. It is of inestimable value to conveyancers in examinations of title, and promotes greater activity in purchase and sale of lands.

To these may be added, as a proof of its success, that though it has been in operation more than forty years under the present statute, it has not been found necessary to change the system in any way, except by a few modifications of the law regulating acknowledgments of instruments and the officers authorized to take them.

That there are objections which may be urged against the system as now practised, cannot be denied, but they affect matters of detail only, and not the principles on which the system is based.

The first and most important of these regards the compensation of the register.

I have already stated that I considered compensation in the nature of fees for services rendered undesirable. The office should be a salaried one, and should be for a longer term. The short tenure of the incumbent is a great temptation to him to demand excessive and illegal fees, which are acquiesced in by the legal profession rather than subject themselves to collision with the register and the risk of delays in their business. As an instance of this, I take from a report of the Bar Association of New York, now engaged in investigating these abuses, the

following facts, which will also serve to give an idea of the enormous business transacted in the register's office in that city. In 1871 there were recorded in that office 13,549 deeds, 15,183 mortgages, 7924 satisfaction of mortgages, and 305 powers of attorney. This was an exceptionally dull year of real estate business, and compares unfavourably with the volume of transactions for previous years. The legal fee for recording a deed (our deeds are generally made out in printed blanks and are of uniform length) is about 1 dollar 5c., the charge made 2 dollars 50c.; the legal fee for recording a mortgage is about 1 dollar 45c., the charge made 2 dollars 75c.; the legal fee for filing satisfaction of mortgages is 25c., the charge made is 1 dollar. It will be seen that while the individual overcharge is small, and such as the profession and the public deem it idle to question, the gross sum received in the course of a year for overcharges amounts to a very large sum. So extra charges are made for searches done out of their order, to the delay of those who are unwilling to submit to the extortion, and it is estimated that the illegal fees received by the register annually amount to about 50,000 dollars (say £10,000). This should be stopped; and the only way to accomplish it is by making the office a salaried one.

Another bad effect of the short term of office of the register is to introduce with each incoming register a new set of rules and regulations, annoying alike to the *employees* of the office and those who visit it on business connected with their profession or property.

Another very serious objection to the present system is the method of keeping the indices. These are written, and the press of business is so great, that although the names of the grantors and grantees are entered alphabetically, it is done only so far as regards the first letter of the name and without regard to the date of the instrument or the date of its receipt for record. The index takes the number of the books employed to transcribe the instruments, in regular sequence showing the names of grantors and grantees in each book without regard to sequence of dates; as there are a great number of books in process of completion at the same time, each clerk being assigned to a book and having so many documents given him each day for record,

the searcher desiring to find a particular deed cannot depend on finding it at once by turning to specified dates, but necessarily wastes much time in searching the indices. The indices should at the end of each year be carefully classified with regard to the dates of the instruments recorded, dates of receipt for record, and the alphabetical sequence of the names of the parties thereto, and then, after thorough examination and verification, be printed for preservation.

This should be made part of the official duty of the register, and a sum sufficient to defray the expenses be annually appropriated to him for the purpose. In 1855 a commission was appointed by the Legislature to prepare printed indices to the books of records already completed. This was done only so far as regards the conveyances at an expense of 600,000 dollars, a sum enormously in excess of the proper value of the work; but only one who has ever had occasion to consult them, as has often been the lot of the writer, can conceive the saving of time and feeling of safety which their use in distinction from those written and made up as heretofore described affords.

In introducing a system of registration where none exists, I should make this provision a *sine qua non* in preparing the act.

While I have often heard objections of this nature urged against these and similar matters of detail, I have never heard any question as to the principles governing our system of registration, and I am convinced that any attempt to do away with it would produce great dissatisfaction and be unsuccessful.

We now come to the consideration of the fifth question in your minute, "Is there danger of uninterested persons inspecting the records for the purpose of injuring any other person by exposing him?" The answer to this among an American community would be, that he who feared exposure from records must have something to conceal which it were better for himself and others should be generally known. That he who gives himself out as a real estate owner, when he either owns none or has encumbered it to its full value, is little better than an impostor, and should be exposed. It is assumed that any representations not borne out by facts are made for fraudulent purposes, whether of business, attainment of social position, or otherwise, and we look upon the

system of registration as a wholesome restraint upon such practices so far as regards interests in real estate. But the true answer to English objections to registration on this ground is this, that experience proves that men are too much engrossed in their own affairs to spend time in hunting the records to ascertain the condition of the realty of others, unless they have a substantial right to be interested in the question. It is a verification of the homely proverb that "What is everybody's business is nobody's business," though perhaps not exactly in the sense in which the adage was originally employed.

This you would find to be the case in England as well, if registration were made compulsory by statute, as with us. It would become so much a matter of course that people would never think of looking over the records from idle curiosity, but would come to regard the system as a welcome security against fraud and imposture, and think, as we do, that anyone who objects to the condition of his realty being known from the records must have illegitimate motives therefor.

I confess that it is difficult for me to conceive any objection which can be made by an upright, conscientious man to registration on this ground. If he be a man of high station, who has freely mortgaged his estate, it is a duty which he owes to others not to conceal the fact, but to accommodate his method of living before the world to his circumstances.

On the other hand, the easy means of investigation which registration gives to ascertain the truth of interested representations is a strong argument in its favour.

Let me instance a solitary example, the justification of bail in important cases, whether civil or criminal.

The possession of real estate is looked upon as an important item in judging of the qualification of bail and the consequent security of justice. It would be a bold man who, in a country where thorough registration is made part of the statute law, would swear to the possession of real estate falsely, knowing that all that counsel had to do to verify his statement is to put in a requisition for copies of the deed by which such real estate was acquired. And if the record of the transfer was found wanting, and the witness produces his original deed unrecorded,

he must encounter the presumption against him which the neglect to record creates. I have known this in many instances to detect straw bail and secure other and responsible bondsmen.

Lastly, we come to the question, "What influence has registration on the value of real estate?"

If I have proved satisfactorily that registration gives security to property owners, and extends convenience to examiners of title and conveyancers, and promotes activity in purchase and sale of real estate, I have, to a great extent, answered this question. For, if these things be so, they must enhance the value of his property to the owner, and encourage free trade in land, which always produces a corresponding increase of price.

But it promotes increased value in real estate in the publicity which it gives to the transactions therein. I have before stated that real estate is, with the American people, as much an object of trade as cotton or any other great staple. But, in order to deal intelligently and successfully, the merchant must be posted in the marketable value and fluctuations of the commodity in which he deals.

Without information of this kind, his judgment, however sound, must frequently be at fault. This information, registration supplies. In New York, the sales of real estate are quoted as regularly and systematically as those of gold, or cotton, or iron.

By reference to these sources of information, any one can without difficulty ascertain the price, at any given time, of lots, in any given quarter of the city, and can compare the rise and fall of property in different locations. This is material aid to the judgment of the purchaser of real estate, by which he forms his opinions and regulates his transactions. It assists materially in keeping down extortionate prices demanded by greedy holders of real estate, to know that their neighbours have accepted a lower figure for their realty in close proximity. In fine, it is this very publicity which has so largely contributed to make every American interested in real estate to some extent. It frees him from dependence on brokers and middle men, provided he chooses to consult his paper, and enables him to make his investments with

more ease and better judgment. These quotations, with the exception of those of sales made at public auction, are taken from the register's office. Without registration, this information would be inaccesible to the great mass of the people, and real estate would consequently be much less active, and the market therefore much less equable and healthy, because controlled by fewer holders.

Curiously enough, when the papers first commenced publication of these transfers, there was a great outcry against it by property owners. But the great mass of the people were quick to recognize the utility and desirableness of the measure, and the quick response of the market and its healthy activity soon convinced even the strongest opponents of publication that it was for their interests, as well as those of the small purchasers, that it should continue. Now we should as soon think of opening our morning paper and finding no reports of transactions on the Stock Exchange as missing the real estate article, with its record of sales, from its accustomed corner.

This is a good instance of the invariable opposition which a new measure, however useful, must always encounter.

The introduction of a system of registration in England would undoubtedly provoke this opposition intensified; but if it can be shown, as I believe it can, to be beneficial in its inception and in its results, it will ultimately be adopted; and ten years after it has been in force people will wonder, as in the case of railways and telegraphs, how they ever managed to get along without it.

I have given a sketch of registration as it exists with us, the methods by which the system is carried out, and of the results which it has entailed. By consulting the statutes herewith submitted,* I think you will be able to correct any mistakes I may have made, and clear up any confusion which I may have caused by treating the subject as one with which you are familiar. Any further information I shall be glad to give at any time.

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* See Appendix.

I think our system more complete, more secure, and more convenient than any other with which I am acquainted, and as such I should be glad to see it adopted in Great Britain.

Very truly yours,

THATCHER M. ADAMS.

59, Wall Street, New York,
March 28th, 1872.

APPENDIX.

Chapter 210.

An Act to authorize the recording of certain documents therein mentioned.

Passed April 18th, 1843.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :—

Sec. 5.—The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may, on proof of the loss of the original and of the record, be again recorded, and such record shall have the same effect as the original record.

Chapter 109.

An Act in relation to the acknowledgment and proof of deeds and mortgages.

Passed April 28th, 1845.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :—

Sec. 1.—Every acknowledgment or proof of a deed or mortgage, made or taken before the mayor of any city in the United States, and certified by him, shall be as valid and effectual as if taken before one of the justices of the supreme court of this state.

Chapter 195.

An Act to provide for taking the acknowledgments of deeds and other written instruments, by persons residing out of the State of New York.

Passed April 7th, 1848.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:—

Sec. 1.—The proof or acknowledgment of any deed, or other written instrument required to be proved or acknowledged, in order to entitle the same to be recorded or read in evidence, when made by any person residing out of this State, and within any other State or territory of the United States, may be made before any officer of such State or territory, authorized by the laws thereof to take the proof and acknowledgment of deeds; and, when so taken and certified as herein provided, shall be entitled to be recorded in any county in this State, and may be read in evidence in any court in this State, in the same manner and with like effect, as proofs and acknowledgments; provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed, the said deed or instrument.

Sec. 2.—To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this State, there shall be subjoined *or attached* (as amended by section 2, chap. 61, 1856, and chap. 195, 1848) to the certificate of proof or acknowledgment, signed by such officer, a certificate under tho name and official seal of the clerk, register, recorder, or a prothonotary of the county in which such officer resides, or the clerk of any court thereof, having a seal, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same; and that such clerk, register, recorder, or prothonotary is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine.

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Sec. 2.—This act shall apply to all conveyances or written instruments heretofore proved or acknowledged and recorded, or to which a certificate has been subjoined or attached, as provided by this act; but shall not affect any litigation now pending.

Sec. 3.—This act shall take effect immediately.

CHAPTER 259.

An act in relation to the proof or acknowledgment of deeds and other conveyances by persons residing out of this State.

Passed April 15th, 1858.

The people of the State of New York, represented in Senate and Assembly, do enact as follows :—

Sec. 1.—Any deed or conveyance or other written instrument, affecting real estate within this State, proved or acknowledged in any other State or territory of the United States, according to the laws of such State or territory, where the granter or granters of such deed or conveyance, and the officer before whom the same shall be proved or acknowledged, shall be dead; and when such proof or acknowledgment shall be certified as herein provided, may be recorded in any county of the State, and may be read in evidence in any court of this State in the same manner and with the like effect as though the same had been proved or acknowledged as required by the laws of this State; provided that the death of the granter or granters, and of the officer before whom the same shall be proved or acknowledged, shall be proved by the affidavit of one or more persons, sworn to before some officer authorized by law to administer oaths in such State or territory, and certified as herein provided.

Sec. 2.—To entitle such deed or conveyance, or other written instrument, to be read in evidence or recorded in this State, there shall be annexed to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resided, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine, and that such deed or conveyance or written instrument is proved or acknowledged in all respects as required by the laws of such State or territory.

There shall also be a like certificate of such clerk or register

attached to the jurat or affidavit, proving the death of the granter or granters, and of the officer before whom the deed or written instrument was proved or acknowledged, certifying that such officer was, at the time of taking such affidavit or affidavits, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to such jurat or affidavit is genuine. Such affidavit or affidavits shall be recorded with such deed or other written instrument, and be presumptive evidence of the facts therein stated.

CHAPTER 421.

An Act to amend an Act entitled, "An Act in relation to the acknowledgment or proof of the execution of instruments in writing by persons in foreign countries, and to the administering of oaths to them," passed April twenty-ninth, eighteen hundred and sixty-three; and to amend section five of chapter seven, title three, part three, article three of the Revised Statutes.

Passed April 14th, 1865.

The people of the State of New York, represented in Senate and Assembly, do enact as follows—

Sec. 1.—Section one of the Act entitled, "An Act in relation to the acknowledgment or proof of the execution of instruments in writing by persons in foreign countries, and to the administering of oaths to them," passed April twenty-ninth, eighteen hundred and sixty-three, is hereby amended so as to read as follows :—

The acknowledgment or proof of any deed or other written instrument, required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence in this State by any person being in any foreign country, may be made before any vice-consul, deputy-consul, consular-agent, vice-consular agent, commercial agent or vice-commercial agent of the United States Government, resident in any foreign part or country, and

when certified by him, under his seal of office, or under the seal of the consulate or agency to which he is attached, to have been made before him by the party executing, or being a subscribing witness to the same, and that the said party executing the same is known or proven to him to be the same person who is described in and who executed the same, shall be as valid and effectual as if taken before one of the Justices of the Supreme Court in this State.

Sec. 2.—Section two of said Act is hereby amended so as to read as follows:—

All acts of vice-consuls, deputy-consuls, consular agents, vice-consular agents, commercial agents or vice-commercial agents of the United States Government, in taking the acknowledgment or proofs of deeds, mortgages or other instruments relating to real estate hitherto performed, are hereby confirmed, provided that the certificate thereof is in the form required by the statutes of this State.

Sec. 3.—The second subdivision of section twenty-five of chapter seven, title three, part three, article three of the Revised Statutes, is hereby amended so as to read as follows:—

Subdivision Two.—The genuineness of the signature of such judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof. If, however, such affidavit be made before the United States Consul resident at and appointed for the City of Paris, in the Empire of France, and certified by him by a certificate having his official seal annexed, it may be read in judicial proceedings in this State and have the same force and effect as if authenticated in the manner and with the formalities above stated in this and the last preceding subdivision.

Sec. 4.—This Act shall take effect immediately.

Chapter 208.

An Act in relation to the acknowledgment or proof of the execution of instruments in writing by persons in the Dominion of Canada.

Passed April 14, 1870.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:—

Sec. 1.—The acknowledgment or proof of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence in this State, by any person being in the Dominion of Canada, may be made (in addition to the persons already authorized by law) before the judge of any court of record, or the mayor of any city, within the said Dominion of Canada; but no such acknowledgment or proof shall be valid unless the officer taking the same knows, or has satisfactory evidence, that the person making it is the individual described in, and who executed, the instrument. And there must be subjoined or attached to the certificate of proof or acknowledgment, if taken before a judge of a court of record, a certificate under the name and official seal of the clerk of the court, that there is such a court; that the judge before whom the proof or acknowledgment is taken is a judge thereof; that such court has a seal; that he is the clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature genuine. If the proof or acknowledgment be taken before the mayor of any city, it shall be certified by him under his seal of office. And such proof or acknowledgment taken, pursuant to the foregoing provisions, shall be as valid and effectual as if taken before a justice of the Supreme Court of this State.

Sec. 2.—This Act shall take effect immediately.

State of New York, } *SS:*
OFFICE OF THE SECRETARY OF STATE. }

I have compared the preceding with the original laws on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of the said original laws relating to registration of mortgages and conveyances.

GIVEN under my hand and seal of office, at the City of Albany, this 15th day of Jan., in the year one thousand eight hundred and seventy-two.

A. G. WOOD,
Deputy-Secretary of State.

Chapter III. Part II.—Revised.

Statutes of the proof and recording of conveyances of real estate, and the cancelling of mortgages.

Sec. 1.—Every conveyance of real estate within this State, hereafter made, shall be recorded in the office of the clerk of the county where such real estate shall be situated; and every such conveyance not so recorded shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

Sec. 2.—Different sets of books shall be provided by the clerks of the several counties for the recording of deeds and mortgages, in one of which sets all conveyances absolute in their terms, and not intended as mortgages or as securities, in the nature of mortgages, shall be recorded; and in the other set such mortgages and securities shall be recorded.

Sec. 3.—Every deed conveying real estate, which by any other instrument in writing shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage, and the person for whose benefit such deed shall be made shall not derive any advantage from the recording thereof, unless every writing operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage or conditional deed, be also recorded therewith and at the same time.

Sec. 4.—To entitle any conveyance hereafter made to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, before any one of the following officers.

1. If acknowledged or proved within this State: the Chancellor, justices of the supreme court, circuit judges, supreme court commissioners, judges of county courts, mayors and recorders of cities, or commissioners of deeds; but no county judge or commissioner of deeds for a county or city shall take any such

proof or acknwledgment out of the city or county for which he was appointed.

2.—If acknowledged or proved out of this State, and within the United States: the Chief Justice and Associate Justices of the Supreme Court of the United States, district judges of the United States, the judges or justices of the supreme superior or circuit court of any State or territory within the United States, and the Chief Judge or any associate judge of the Circuit Court of the United States in the district of Columbia; but no proof or acknowledgment taken by any such officer shall entitle a conveyance to be recorded, unless taken within some place or territory to which the jurisdiction of the court to which he belongs shall extend

Sec. 5.—If the party or parties executing such conveyance shall be, or reside, in any State or kingdom in Europe, or in North or South America, the same may be acknowledged or proved before any minister plenipotentiary, or any minister extraordinary, or any *charge des affaires* of the United States, resident and accredited within such State or kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the Consul of the United States appointed to reside at Paris; and if such parties be, or reside, in Russia, such conveyance may be acknowledged or proved before the Consul of the United States appointed to reside at St. Petersburgh.

Sec. 6.—If the party to such conveyance be, or reside, within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, the same may be acknowledged or proved before the Mayor of the City of London, the Mayor or Chief Magistrate of the City of Dublin, or the Provost or Chief Magistrate of the City of Edinburgh, or before the Mayor or Chief Magistrate of Liverpool, or before the Consul of the United States appointed to reside at London.

Sec. 7.—Such proof or acknowledgment, duly certified under the hand and seal of office of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or *charge des affaires*, shall have the like force and validity as if the same were taken before a justice of the Supreme Court of this State.

Sec. 8.—Every such conveyance heretofore made, or hereafter to be made, may be acknowledged or proved, without the United

States, before any person specially authorized for that particular purpose, by a commission under the seal of the Court of Chancery of this State, to be issued to any reputable person residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken shall be of the like force and validity as if the same were taken before a justice of the Supreme Court of this State.

Sec. 9.—No acknowledgment of any conveyance having been executed shall be taken by any officer, unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed such conveyance.

Sec. 10.—The acknowledgment of a married woman residing within this State to a conveyance, purporting to be executed by her, shall not be taken, unless, in addition to the requisites contained in the preceding section, she acknowledge, on a private examination apart from her husband, that she executed such conveyance freely, and without any fear or compulsion of her husband; nor shall any estate of any such married woman pass by any conveyance not so acknowledged.

Sec. 11.—When any married woman, not residing in this State, shall join with her husband in any conveyance of any real estate, situated within this State, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole.

Sec. 12.—The proof of the execution of any conveyance shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person whc was a subscribing witness to such instrument.

Sec. 13.—Upon the application of any grantee in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify

touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of conveyances, except a commissioner, of deeds may issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such conveyance.

Sec. 14.—Every person who, being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall forfeit to the party injured one hundred dollars, and may also be committed to prison by the officer who issued such subpœna, there to remain, without bail and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

Sec. 15.—Every officer who shall take the acknowledgment or proof of any conveyance shall endorse a certificate thereof, signed by himself, on the conveyance; and in such certificate shall set forth the matters herein before required to be done, known, or proved on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Sec. 16.—Every conveyance acknowledged or proved, and certified in the manner above prescribed, by any of the officers beforenamed, may be read in evidence without further proof thereof, and shall be entitled to be recorded.

Sec. 17.—The record of a conveyance duly recorded, or a transcript thereof duly certified, may also be read in evidence, with the like force and effect as the original conveyance. Neither the certificate of the acknowledgment, or of the proof, of any conveyance, nor the record, or transcript of the record, of such conveyance, shall be conclusive; but may be rebutted, and the force and effect thereof may be contested by any party affected thereby. If the party contesting the proof of a conveyance shall make it appear that such proof was taken upon the oath of an interested or incompetent witness, neither such conveyance, nor the record thereof, shall be received in evidence until established by other competent proof.

Sec. 18.—Where any conveyance shall be proved or acknow-

ledged, before any judge of the county courts, not of the degree of counsellor-at-law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless, in addition to the preceding requisites, there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and official seal of the clerk of the county in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorized to take the same; and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes that the signatures to the said certificate of proof or acknowledgment is genuine.

Sec. 19.—The last section shall not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent of the Pulteney Estate, lawfully authorized to convey real estate.

Sec. 20.—The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any judge or commissioner, in the cases where such last-mentioned certificate is required, shall be recorded, together with the conveyance, so proved or acknowledged; and, unless the said certificates be so recorded, neither the record of such conveyance, nor the transcript thereof, shall be read or received in evidence.

Sec. 21.—All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed, by the treasurer of the State of Connecticut, which shall be acknowledged by him before the Secretary of State of the State of Connecticut, and the acknowledgment of which shall be certified by the said secretary under the seal of the said State in the manner herein prescribed, may be recorded in the proper offices within this State without further proof thereof; and every such conveyance, or the record thereof, or the transcript of such record, duly certified, may be read in evidence, as if such conveyance had been acknowledged before a justice of the supreme court.

Sec. 22.—Every conveyance of any real estate within this State, heretofore executed and heretofore acknowledged, or proved and certified in such manner as to be entitled to be read in evidence or recorded under the laws now in force, but which has not been so recorded, shall be entitled to be read in evidence in all courts, and to be recorded in the proper office in the same manner and with the like effect as if this chapter had not been passed.

Sec. 23.—Every such conveyance not already proved or acknowledged may be proved or acknowledged in the same manner as conveyances hereafter executed, and when so proved, acknowledged or recorded, shall have the like effect.

Sec. 24.—Every conveyance entitled by law to be recorded shall be recorded in the order, and as of the time when the same shall be delivered to the clerk for that purpose, and shall be considered as recorded from the time of such delivery.

Sec. 25.—The recording officer shall make an entry in the record immediately after the copy of every conveyance recorded, specifying the time of the day, month and year when the said conveyance was recorded, and shall endorse upon every conveyance recorded by him a certificate, stating the time as aforesaid; when and the book where the same was recorded.

Sec. 26.—To entitle the transcript of any record of such conveyance recorded as aforesaid, and of the certificates of the acknowledgment or proof thereof, and of the genuineness of any signature to such certificate, to be read in evidence, the same shall be certified to be a true copy of such record, by the clerk of the county in whose custody the same shall be, under the seal of the Court of Common Pleas of the county of which he is clerk, or by the Register of the City and County of New York, where such record shall be in his custody.

Sec. 27.—Every conveyance of real estate situated without this State, heretofore made or hereafter made, and which shall be acknowledged or proved in the manner prescribed by the laws of this State in relation to conveyances of lands within this State, may be read in evidence in any court without further proof thereof, in the same manner and with the same effect, as if such conveyance related to real estate within this State; but this section shall not be construed to prevent the reading in evidence of any conveyance of lands within any other of the United

States, which shall have been duly authenticated, according to the laws of such State, so as to be read in evidence in the courts thereof.

Sec. 28.—Any mortgage that has been registered or recorded, or that may hereafter be recorded, shall be discharged upon the record thereof by the officer in whose custody it shall be, when ever there shall be presented to him a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

Sec. 29.—Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

Sec. 30.—Where the witnesses to any conveyance authorized by this chapter to be recorded shall be dead, then the same may be proved before any officer authorized to take the proof and acknowledgment of deeds, other than commissioners of deeds, and county judges not of the degree of counsel in the Supreme Court.

Sec. 31.—The proof of the execution of any conveyance in such case shall be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses or any one of them, and of the grantor, all which evidence, with the names and places of residence of the witnesses examined before him, shall be set forth by the officer taking the same in his certificate of such proof.

Sec. 32.—Any conveyance proved and certified, pursuant to the two last sections, may be recorded in the proper office, if the original deed be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same.

Sec. 33.—The recording and deposit of any conveyance, proved and certified according to the provisions of the three last sections, shall be constructive notice of the execution or such conveyance to all purchasers subsequent to such recording; but such proof, recording, or deposit shall not entitle such conveyance or the